

Filed: December 9, 1996

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Nos. 96-1130(L)
(CA-94-706-1)

RPR & Associates, Incorporated,

Plaintiff - Appellee,

versus

O'Brien/Atkins Associates, P.A.,

Defendant - Appellant.

O R D E R

The Court amends its opinion filed November 26, 1996, as follows:

On page 2, section 5, lines 4-5 -- the attorney information is corrected to read: "Laura Broughton Russell, POYNER & SPRUILL, L.L.P., Raleigh, North Carolina; Dailey J. Derr, DAILEY J. DERR, P.A., Durham, North Carolina, for Appellants. . . ."

For the Court - By Direction

/s/ Patricia S. Connor

Clerk

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-1130

RPR & ASSOCIATES, INCORPORATED,

Plaintiff - Appellee,

versus

O'BRIEN/ATKINS ASSOCIATES, P.A.,

Defendant - Appellant,

and

TAI ASSOCIATES,

Defendant.

No. 96-1131

RPR & ASSOCIATES, INCORPORATED,

Plaintiff - Appellee,

versus

TAI ASSOCIATES,

Defendant - Appellant,

and

O'BRIEN/ATKINS ASSOCIATES, P.A.,

Defendant.

Appeals from the United States District Court for the Middle District of North Carolina, at Durham. William L. Osteen, Sr., District Judge. (CA-94-706-1)

Argued: September 23, 1996

Decided: November 26, 1996

Before WILKINS, Circuit Judge, BUTZNER, Senior Circuit Judge, and MICHAEL, Senior United States District Judge for the Western District of Virginia, sitting by designation.

Affirmed by unpublished per curiam opinion.

ARGUED: John Lewis Shaw, POYNER & SPRUILL, L.L.P., Raleigh, North Carolina, for Appellants. Steven Douglas Hedges, Allen Holt Gwyn, Jr., PATTON BOGGS, L.L.P., Greensboro, North Carolina, for Appellee. **ON BRIEF:** Laura Broughton Russell, POYNER & SPRUILL, L.L.P., Raleigh, North Carolina; Dailey J. Derr, DAILEY J. DERR, P.A., Durham, North Carolina, for Appellants. Eric C. Rowe, PATTON BOGGS, L.L.P., Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Appellee RPR & Associates, Inc. ("RPR"), a prime contractor for the State of North Carolina in a construction project, brought a claim against Appellants O'Brien Associates, P.A. ("O'Brien"), the architect working on the project, and Tai & Associates ("Tai"), the soils and foundation engineer on the project. RPR alleges that appellants breached various duties of care owed RPR, pursuant to North Carolina law, due to their negligent performance on the project. Appellants moved the district court to dismiss RPR's claim under Fed. R. Civ. P. 12(b), and the district court denied their motions. Appellants appeal from the district court's denial of their motions to dismiss insofar as it rejected their defenses pursuant to the doctrines of sovereign immunity (asserted by O'Brien and Tai) and arbitral immunity (asserted only by O'Brien).

The district court concluded that appellants are private parties and, as such, are not entitled to sovereign immunity under North Carolina law. Additionally, the district court found that RPR's claim was based on O'Brien's performance of its architectural duties, and not on functions performed by O'Brien as an arbiter between RPR and North Carolina; thus, the district court determined that O'Brien was not entitled to assert the defense of arbitral immunity against RPR's claim against it.

Having considered all of the arguments raised in the parties' briefs and at oral argument and following a thorough review of the

record and applicable law, we affirm based on the reasoning of the district court.

AFFIRMED